IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO.761 OF 2005
WITH
FIRST APPEAL NO.762 OF 2005
WITH
CIVIL APPLICATION NOS.1008, 4536, 1105 & 4537 OF 2005

FIRST APPEAL NO.761/05:

Chotelal Ramkaran Yadav,
Aged about 40 years, Occ.Business,
Hindu, adult, Indian Inhabitant of Mumbai,
residing at S.N. Dubey Road, Chunabhatti,
Dahisar East, Mumbai-400 068. ...Appellant.

Versus

Municipal Corporation for Greater Mumbai,
Constituted Under the Bombay Muniucipal
Corporation Act, 1888, having its office at
Mahapalika Bhavan, Mahapalika Marg,
Fort, Mumbai-400 001. ...Respondent.

.....

Mr. M. R. Yadav for the Appellant.
Mr. A. Y. Sakhare with Ms. Geeta Joglekar for the Respondent.

FIRST APPEAL NO.762/05:

Jaggu Chauthi Yadav,
Aged about 48 years, Occ.Business,
Hindu, adult, Indian Inhabitant of Mumbai,
residing at S.N. Dubey Road, Chunabhatti,
Dahisar East, Mumbai-400 068. ...Appellant.

Versus

Municipal Corporation for Greater Mumbai,
Constituted Under the Bombay Muniucipal
Corporation Act, 1888, having its office at
Mahapalika Bhavan, Mahapalika Marg,
Fort, Mumbai-400 001. ...Respondent.

.....

Mr. M. R. Yadav for the Appellant.
Mr. A. Y. Sakhare with Ms. Geeta Joglekar for the Respondent.

.....

CORAM :DR. D.Y. CHANDRACHUD, J.

November 17, 2005.

ORAL JUDGMENT:

These appeals arise out of a common judgment and order of the City Civil Court dated 1st March 2005 in four suits, L.C. Suit Nos. 8083 and 8084 of 1995, 6040 of 1999 and S. C. Suit No. 2538 of 2003. All the Plaintiffs in the aforesaid suits claim that they have acquired land bearing Survey No.123, Hissa No.1A under an agreement to sell dated 30th August 1968. The Plaintiffs claim that they had purchased 10 gunthas of land along with the structure which was in existence thereon. On the basis of an apprehension that the structure would be demolished by the officials of the Maharashtra Housing and Area Development Authority (MHADA) and the

Municipal Corporation, L.C. Suit Nos.3928, 3929 and 3930 of 1991 were instituted before the City Civil Court seeking relief to the effect that the structure should not be demolished without due process of law. In Notice of Motion No.3091 of 1991 in L.C. Suit No.3930 of 1991, an injunction was sought in respect of a structure admeasuring 60 ft. x 35 ft. situated at Survey No.123, Hissa 1A. A protective order was passed on 1st May 1991 and it is the case of the Plaintiffs that the structure was demolished by MHADA in January 1992 during the subsistence of the interim order. Contempt Notices of Motion were taken out. During the pendency of those motions, a letter was issued by MHADA on 1st July 1992 stating that the structure was wrongly demolished. Accordingly, relying upon the aforesaid letter, the Suits and Contempt Motions were withdrawn. The Plaintiffs thereupon commenced reconstruction of their structures and upon the allegation that they were obstructed by MHADA, L.C. Suit Nos. 5862, 5863 and 5864 of 1992 came to be instituted with a prayer for reconstruction. A refusal of interim relief in those suits resulted in proceedings before this Court in Appeals from Order and an order dated 10th February 1993 was passed by a Learned Single Judge of this Court permitting

the Plaintiffs to reconstruct the structure admeasuring 60' x 35'. The order passed by this Court (P. S. Patankar, J.) contained a recital of the factual position, according to the Plaintiffs, which it would now be material to extract :

> "The admitted position is that Survey No.123 Hissa No.1A is in possession of the Petitioners. Survey No.123 Hissa No.1B is owned by Respondents. It is the case of the Petitioners that there was a structure admeasuring 60' x 35' which was divided into 3 parts and was occupied by the three Petitioners."

2. This Court noted that the Original Plaintiffs sought to reconstruct subject to an undertaking that they would demolish the construction if the suits were to fail. Accordingly the following order was passed by the Court:

> "i) The Petitioners are permitted to reconstruct the structure admeasuring 60' x 35' of brick and masonry walls with cement sheet roof and having height of 10' at their costs on Survey No.123 Hissa No.1A as shown in the plan annexed at Ex.C hereto. The construction to be made at the same place as indicated in Exh.C and also on taking into consideration the demarcation made by D. I. L. R. on 18th/19th of December 1992. In case the demarcation shows that the construction hereby allowed and as indicated in sketch plan would fall in Survey No.123 Hissa No.1B then the same would not be carried out on the said Survey No.123 Hissa No.1B.

> -ii) The Petitioners to give an undertaking within a period of 7 days from today that they would construct as per the order passed above and that they would demolish the said construction with a period of one month at their own costs in case the suits are dismissed." (emphasis supplied).

Eventually, all the three suits were dismissed on merits on 9th November 2000 and a direction came to be issued for the demolition of the structures. The First Appeals which were filed in this Court (First Appeal Nos.30 to 32 of 2001) were dismissed by a Learned Single Judge (R. M. S. Khandeparkar, J.) on 29th January 2002. The plaintiffs aggrieved thereupon preferred Letters Patent Appeals in which an order was passed by a Division Bench granting liberty to the Appellants to file fresh suits after joining the owners of the property and after issuing a notice to MHADA under the relevant provisions of the Maharashtra Housing and Area Development Authority Act, 1976. While disposing of the appeal, the Division Bench issued the following directions :

> "The parties to maintain status quo with regard to the structure constructed by the Petitioners for a period of four weeks. However, the undertaking given shall be subject to the order that may be passed in the fresh suit. It is made clear that if no interim order is passed, then the undertaking shall be binding upon these petitioners and they shall be

> required to demolish the structure as per the said undertaking." (emphasis supplied).

3. Thereafter, fresh suits were instituted before the City Civil Court which have been disposed of by a common judgment dated 1st March 2005. These two appeals arise out of the dismissal of Suit Nos.8083 and 8084 of 1995. The relief which has been sought before the City Civil Court is for a declaration that the Municipal Corporation has no right to demolish, interfere with or prevent the construction work carried out by the Plaintiffs. A permanent injunction has been sought restraining the Corporation from demolishing the construction of premises admeasuring 60' x 35' situated at Survey No.123, Hissa No.1A.

4. The issues framed by the Trial Court in these suits were: (i) Whether the Plaintiffs prove that they are co-owners of the properties together with a structure admeasuring 10 gunthas in Survey No.123, Hissa No.1A; (ii) Whether the Plaintiffs prove that the Defendant-Corporation has no right to demolish or interfere with the construction work; (iii) Whether the suit is maintainable for want of statutory notice

under Section 527 of the Mumbai Municipal Corporation Act, 1888; and (iv) Whether massive unauthorised constructions have been carried out under the guise of the order of the Court. The Learned Trial Judge has arrived at the finding that the Plaintiffs failed to establish their own title in respect of the premises and that the agreement to sell dated 30th August 1968 was neither produced on record, nor proved in the evidence. The Plaintiff-Appellants, it has been found, failed to establish any authorisation in respect of the three structures which originally were found to exist. Moreover, the Plaintiffs had reconstructed more than 10 structures admeasuring 2575 sq.ft., again without permission.

5. The point which falls for consideration in these First Appeals is whether the construction that has been carried out by the Appellants is authorised.

6. Counsel appearing on behalf of the Appellants and the Respondent-Corporation have agreed that having regard to the narrow compass of the matter, the appeals may be heard and

disposed of at this stage The Appeals are accordingly admitted and are taken up for final disposal by consent. Counsel appearing on behalf of the parties have produced and relied upon a compilation containing material that was placed on the record of the Trial Court. With the assistance of the Counsel, I have perused the pleadings and the proceedings.

7. A serious grievance is made on behalf of the Municipal Corporation to the effect that even though, according to the Appellants, the structure admeasuring 60' x 35' was divided into three parts and was in the occupation of the three Appellants (this being specifically recorded in the order passed by P. S. Patankar, J. on 10th February 1993), the Appellants have proceeded to construct additional structures without authorisation or permission. On 5th July 2005, this Court appointed a Commissioner to visit the site with notice to the parties and submit his report on the dimensions of the existing structure. The Commissioner submitted his report on 25th July 2005 and on 21st September 2005, the following order was passed by the Court:

"2. Both the counsel agree that the plaintiffs/appellants were permitted by this Court to make construction over an area of 60 x 35. Mr. Sakhare pointed out earlier that the construction is more than this area. In order to solve the dispute, Commissioner was appointed by me. He has prepared a report along with a map. About the said map there is no dispute between the parties.

-3. Mr. Murthy, on the basis of the map filed by the Commissioner which he has shown to Constituted Attorney Mr. H.B. Tiwari and to the instructing Advocate – Mr.Pandey, made the following statement:

-a) The appellants will remove Gala Nos.1 and 2 as shown in the said map;

-b) The wall between Gala Nos.3 and 4 will thereafter be treated as boundary starting from Western side and the Appellants will retain 60 feet towards the Eastern side and remove whatever structure or structures are there beyond 60 feet;

-c) This will be done by the Appellants in the presence of the Officers of the MCGM, for which they will have to give notice;

-d) Even if nobody is present for the MCGM, the Appellants will have to carry out their undertaking within two weeks period and thereafter file Affidavit to that effect before this Court along with photographs.

Undertaking of the Appellants as given by the Constituted Attorney through his Counsel Mr.Murthy and Instructing advocate Mr. Pandey, to the above effect, is accepted.

-4. This removal is without prejudice to the claim and contention of the MCGM that the entire structure is illegal. There will be stay in respect of the remaining structure till

the Appeals are admitted."

The undertaking furnished to the Court has not been complied with and a Civil Application has now been taken out to the effect that the statement which was made before this Court by the Constituted Attorney was not authorised.

8. The basis on which declaratory and injunctive relief was sought before the City Civil Court was that the original structures were authorised and that the Corporation was not justified in interfering with the possession of the Appellants. On behalf of the Plaintiffs, evidence was adduced of Harishchandra Bhagwan Tiwari as Constituted Attorney. The cross-examination of P. W. 1, Harishchandra is significant for in the course thereof, he made the following admissions:

> "The suit property was purchased from Govardhanbhai Patel by the pltff. and others in the year 1968. When the property was purchased the structure consisting of three rooms was existing. The said structure was demolished in the year 1992 by MHADA. I do not know whether those three rooms were constructed with required permission or not. I do not know whether it was constructed without prior

> permission of BMC. Today there are ten structures existing at the said site. All those ten structures are used for commercial purposes and not for residential purpose. We have not obtained any permission from BMC for the construction." (emphasis supplied).

These admissions of the witness show that: (i) When the property was purportedly purchased by the Appellant in 1968, there was, according to them, a structure consisting of three rooms in existence; (ii) Even in respect of the aforesaid structure, there is absolutely no evidence to show that it had been constructed with the required permission of the Planning authority; (iii) As of January 2005, there were 10 structures on the site which have been used for commercial purposes; and (iv) No permission has been obtained from the Municipal Corporation for the construction. The report submitted by the Commissioner only corroborates what is admitted by the witness who deposed on behalf of the Appellants before the Trial Court.

9. The Appellants were permitted by the orders of the Learned Single Judge of this Court dated 10th February 1993 to reconstruct a structure admeasuring 60' x 35'; subject to the undertaking that even

that structure would have to be demolished if the suits were dismissed. Acting under the guise of the protective order passed by this Court, 10 structures were reconstructed admeasuring, as the Commissioner found, over 2500 sq.ft. There is no authorisation by the Municipal Corporation in respect of the structures as existing at present or for that matter in respect of the structure as it originally stood. Even before this Court, Counsel appearing on behalf of the Appellants has been unable to point out any document reflecting that the structure as it originally stood or the structures as they stand today are authorised. The conduct of the Appellants in furnishing an undertaking before this Court and then attempting to resile from the undertaking demonstrates their lack of bonafides.

10. Having thus considered the First Appeals from all perspectives, and on a consideration of these cases, I do not find any merit therein. The appeals are accordingly dismissed with costs.

11. In view of the disposal of the First Appeals, the Civil Applications are rendered infructuous and are accordingly disposed of.

.....